

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON ENERGY AND TELECOMMUNICATIONS

Call to Order: By **SENATOR WALTER MCNUTT**, on March 22, 2001 at 3:05 P.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Mack Cole, Chairman (R)
Sen. Steve Doherty (D)
Sen. Alvin Ellis Jr. (R)
Sen. Mike Halligan (D)
Sen. Bea McCarthy (D)
Sen. Walter McNutt (R)
Sen. Don Ryan (D)
Sen. Corey Stapleton (R)
Sen. Mike Taylor (R)
Sen. Tom Zook (R)

Members Excused: Sen. Royal Johnson, Vice Chairman (R)

Members Absent: None.

Staff Present: Todd Everts, Legislative Branch
Misti Pilster, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 508, 3/21/2001; SB 510,
3/20/2001; SB 506, 3/20/2001
Executive Action:

HEARING ON SB 508

Sponsor: **SENATOR MACK COLE, SD 4, Hysham**

Proponents: **Doug Hardy, Montana Electric Cooperatives Assn.**
Bob Gilbert, Rosebud County
Keith Allen, International Brotherhood of Electrical
Workers, # 233

Jim Mockler, Montana Coal Council
Ellen Engstedt, Montana Wood Products Assn.
Jerry Driscoll, Montana Building Trades Council

Opponents: **Patrick Judge, Montana Environmental Information Center**
Debbie Smith, Natural Resources Defense Council

Opening Statement by Sponsor:

SENATOR MACK COLE, SD 4, Hysham, submitted written testimony, **EXHIBIT (ens65a01)**.

Proponents' Testimony:

Doug Hardy, Montana Electric Cooperatives Assn., submitted written testimony for himself and on behalf of Basin Electric Power Cooperative, **EXHIBIT (ens65a02), EXHIBIT (ens65a03)**.

Bob Gilbert, Rosebud County, supported the legislation and explained that they don't want to see negative impacts to existing generators.

Keith Allen, International Brotherhood of Electrical Workers, # 233, voiced support of the bill.

Jim Mockler, Montana Coal Council, was in favor of the legislation.

Ellen Engstedt, Montana Wood Products Assn., noted that Montana's wood mills are struggling, in part because of high power costs. She mentioned the Venture Star project and said that the jobs and economic boost would have far outweighed the lack of tax collection, had the state received the project. With stable energy costs, their member companies have a better chance of staying in business and will continue to contribute to the state's coffers in the variety of taxes they provide.

Jerry Driscoll, Montana Building Trades Council, urged favorable consideration from the committee.

Opponents' Testimony:

Patrick Judge, Montana Environmental Information Center, opposed the bill. Montana has a surplus of generation capacity. Cost of electricity is a problem in the state, but this bill is not the right way to solve that problem.

Debbie Smith, Natural Resources Defense Council, believed that the bill was written too broad, in terms of the kinds of plants that would be provided incentives. A ten year property tax exemption, under certain circumstances, would keep the price of power from conventional resources at an artificial low and would prevent accurate price signals from being sent to energy purchasers. Without tax incentives, power from conventional resources such as natural gas and coal can be sold into the market at prices competitive with other plants. If limited to new wind, solar, geothermal, or biomass resources, this would be a very sound consumer and environmental bill. A cost based rate for 20 years, especially with regard to coal, may not be a good deal for consumers. Cost based rates could lead to stranded costs in the future when the market price of power comes down. She would like to see something come out of the legislature providing appropriate price signals and tax incentives to sustainable technologies for energy.

Questions from Committee Members and Responses:

SENATOR ALVIN ELLIS wished to explore the idea of viable wind, solar, and geothermal resources. **Debbie Smith** explained that wind energy capacity for up to 20% of a system's resource mix is a workable amount that doesn't jeopardize system reliability. Solar power is currently not a good commercial scale resource in Montana and geothermal resources are limited. In certain situations, landfill gas is a competitive resource. **SENATOR ELLIS** wondered if Billings would have an opportunity to develop biomass gas off of their landfill. **Ms. Smith** wasn't suggesting that the resources she proposed be the exclusive means of power in Montana.

SENATOR STEVE DOHERTY proclaimed that the bill says contracts have to be offered, but that the power doesn't have to be used in Montana. **Doug Hardy** said that was correct. **SENATOR DOHERTY** referred to the definitions on page 2 and was confused with some issues. **Mr. Hardy** declared that they looked at putting a minimum amount contracted on the bill. From a practical standpoint, the maximum amount someone who built generation could do was sell one year contracts out of state. **SENATOR DOHERTY** asked what an "associated prime mover" was. **Mr. Hardy** couldn't find the definition anywhere other than in the tax code. **SENATOR DOHERTY** wanted to know what sort of incentive was being offered. **Mr. Hardy** cited that the impact would depend on what county it was in. On the counties that were randomly sampled, an incentive would be created in the range of \$2.8 to \$4 million. A specific county would need to be evaluated to see how state or local governments would be affected, depending on mill levies.

{Tape : 1; Side : B}

SENATOR MIKE HALLIGAN questioned if the sponsor could see the incentive being provided to potentially new coal fired or natural gas plants that would make the existing Colstrip plants stranded. **SENATOR COLE** couldn't foresee that happening because the Colstrip plants were built under different criteria. Rosebud County has a low tax base. As long as maintenance at the Colstrip plants are kept current, they could run for a long time. **SENATOR HALLIGAN** thought that in five years, new plants could produce a cheaper product than existing plants due to new technology and no property tax requirements.

SENATOR ELLIS inquired about depreciation and costs of current plants. **SENATOR COLE** purported that plants still pay some taxes, but depreciation is out of them. **SENATOR ELLIS** stated that with the exception of hydro, coal is the cheapest source of power. **SENATOR COLE** declared that coal is the most economical long-term source of power.

SENATOR DON RYAN wondered how many cents per kilowatt a hour it would cost to build a new coal or gas-fired generator currently. **Bob Anderson, Public Service Commission (PSC)**, was reluctant to provide a number. It depends on several things, including the cost of fuel. A coal plant could probably be built in the neighborhood of three cents per kilowatt hour. **Mr. Hardy** believed that new generation facilities could be built in the range of three to four and a half cents per kilowatt hour.

SENATOR DOHERTY implored who was going to determine what a reasonable rate of return would be on the contract, in order to qualify for the tax. **Mr. Hardy** indicated that there was an amendment that would fix the rate of return to not exceed 12%.

SENATOR MIKE TAYLOR pressed for the number of jobs a 300 megawatt plant would create. **Mr. Hardy** exclaimed that a 250 megawatt plant would employ approximately 75 people at the plant. If the number of people at the mine were included, there would be a similar number of employees. **SENATOR TAYLOR** desired to know the average salary of the employees. **Mr. Hardy** expatiated that it would depend on who built the plant, but in existing facilities the average pay is double the state average, plus good benefits. A conservative estimate would be \$40,000. **SENATOR TAYLOR** was curious as to how long a plant would be in production after depreciation. **Mr. Hardy** said a 30 year anticipated life with financing was very acceptable.

SENATOR HALLIGAN wondered why a tax incentive was needed to do something the market would easily allow if financing could be obtained for around three cents per kilowatt hour and power was selling on the spot market for close to \$35 per kilowatt hour.

Mr. Hardy proclaimed that the idea of the bill was to do something to tag cost based power for Montanans as opposed to building a merchant plant.

SENATOR DOHERTY wanted to capture some of the 25% benefit for Montanans. **Mr. Hardy** responded that plants would have to go off-line due to maintenance. The bill is not designed for a co-op generating facility. In a co-op model, the members in Montana would receive benefits. In other scenarios, if 25% was being sold on another market, benefits would still come to Montana indirectly.

SENATOR RYAN inquired about the number of workers during the construction phase and impact dollars. **Mr. Hardy** declared that workers who do the construction don't necessarily have their families with them at that time. There is a different ratio of school age children for construction versus operation. He was unsure of the total number of workers needed during the construction phase. **SENATOR RYAN** wondered how the net generation capacity is determined for a plant. **Mr. Hardy** elaborated that in a 250 megawatt plant where 10% of the power is used for internal uses, the net generating capacity would be 10% less. **SENATOR RYAN** asked if there was a limit to the number of plants that a particular entity could build. **Mr. Hardy** noted that as currently drafted, the bill sets no limit.

SENATOR WALT MCNUTT wished for **Mr. Hardy** to calculate what the average taxpayer in Richland County would be paying and what an additional 150 jobs would generate.

{Tape : 2; Side : A}

SENATOR TAYLOR inquired about the incentives in Arizona, Texas, or other states to build generation plants and the cost of building a coal fired 250 megawatt plant. **Mr. Hardy** did not know about the incentives in other states. As for the cost, a company should have at least \$300-400 million at their disposal.

Closing by Sponsor:

SENATOR COLE thought this legislation was one small part of the long term solution to get more generation in Montana at a reasonable price.

HEARING ON SB 510

Sponsor: SENATOR COREY STAPLETON, SD 10, Billings

Proponents: Jim Mockler, Montana Coal Council
Tom Ebzery, Pacific Northwest Utilities
Cathy Conover, Montana University System

Opponents: Representative Norma Bixby, HD 5
Debbie Smith, Natural Resources Defense Council

Opening Statement by Sponsor:

SENATOR COREY STAPLETON, SD 10, Billings said that in essence, the bill encourages the leasing of land for coal mining as received from the government as part of the Crown Butte land exchange.

Proponents' Testimony:

Jim Mockler, Montana Coal Council, thanked the sponsor for the bill, but thought that there were some problems. On line 10, he suggested that everything after "purchases" be stricken in the title. He assumed that the bill intends to give a tax incentive to anyone who would develop leases and felt that was unconstitutional. He wanted the committee to keep sections 1 and 2, while deleting the rest of the bill.

Tom Ebzery, Pacific Northwest Utilities, was unfamiliar with "bridge to new economy" in section 6 and wanted a few technical amendments.

Cathy Conover, Montana University System, supported the legislation because of increased revenue directed to the research and commercialization funds. This is an investment that has a proven return. There is a federal program called Ebscore. There are five federal agencies which bring grant monies into the university system. For the next biennium, there is a required state match to get the federal monies of \$7.4 million. That money will bring in \$11.7 million in federal grant monies. Twenty percent of the funding from the research and commercialization fund goes to production agriculture research.

Opponents' Testimony:

Representative Norma Bixby, HD 5, read a statement from the president of the Northern Cheyenne Tribe. The amendment to the section dealing with disposition of royalties and other receipts is irresponsible. The section takes all the monies and

distributes it for projects outside the local area. None of the monies are earmarked for identification and mitigation of impacts that southeastern Montana will undoubtedly experience, if and when Otter Creek is developed. No money is set aside for reclamation land preservation. It is time for the Montana legislature to partake in responsible development. If the legislature is set on developing the Otter Creek tracts, it ought to do it in a responsible manner. The legislature must bear the burdens with the benefits. This means setting aside money that will address the burdens. Anything short of this is irresponsible. She submitted letters from the Tribal president Geri Small and Governor Martz, **EXHIBIT(ens65a04)**, **EXHIBIT(ens65a05)**.

Debbie Smith, Natural Resources Defense Council, declared that the groups she represents do not support tax incentives for fossil fuel development. Keeping an artificially low price signal for use of fossil fuels distorts price signals for customers to influence their energy use.

Questions from Committee Members and Responses:

SENATOR DOHERTY questioned whether the sponsor agreed with **Mr. Mockler** in striking everything but the first two sections.

SENATOR STAPLETON didn't want to structurally mess up the bill to make it do something that was not the intent, but agreed to do whatever necessary to send it to the House.

SENATOR DOHERTY wondered where the money would go without this legislation. **Tom Ebzery** understood that the money would go into the school trust fund. **SENATOR DOHERTY** didn't think the legislature could direct where the money should go from a state school section type of lease if the lands and mineral rights were exchanged to become property of the state. **Mr. Ebzery** thought that the lands are not school trust lands and are just going to the agency or board that administers lands going to the state. They are statutory transfers so there shouldn't be a constitutional problem. **SENATOR DOHERTY** was concerned about the prejudgement of environmental standards. **Mr. Ebzery** thought that section 1 was clean-up language and a policy call for the legislature. **SENATOR DOHERTY** wished for the exact language dealing with the proceeds from the transfer of lands. **Mr. Ebzery** knew that there was statutory language talking about the transfer.

SENATOR TAYLOR thought that impact fees should be included in the bill.

Closing by Sponsor:

SENATOR STAPLETON was very interested in making a progressive and entrepreneurial bill which doesn't violate the intent of anything in existing law.

HEARING ON SB 506

Sponsor: **SENATOR JOHN COBB, SD 25, Augusta**

Proponents: **Bob Anderson, Public Service Commission**
Kelly Flaherty Settle, Alternative Energy Resources
Organization
Debbie Smith, Natural Resources Defense Council
George Ochenski, Montana-Wyoming Tribal Leaders
Council

Opponents: **Bob Gilbert, Rosebud County**

Opening Statement by Sponsor:

SENATOR JOHN COBB, SD 25, Augusta, submitted a description of the various sections in the bill, **EXHIBIT (ens65a06)**.

{Tape : 2; Side : B}

Proponents' Testimony:

Bob Anderson, Public Service Commission, cited that the bill will empower customers to have some control over the situation that will arise in July 2002 when all customers will be exposed to the open market. Customer premise generation is one of the trends of the future in the electrical industry and it makes sense to promote it. The resources and their technologies are also good environmental policy.

Kelly Flaherty Settle, Alternative Energy Resources Organization, stated that according to the American Wind Energy Assn., Montana ranks fifth in the nation in wind generation. This bill would provide incentives for citizens, especially agricultural producers, that need to be able to control their cost of inputs.

Debbie Smith, Natural Resources Defense Council, declared that the bill was extremely extensive and needed to be limited. The problems with the bill come with the definition of the alternative energy systems that are found in sections 6, 9, and 24. Those sections have expansive definitions of alternative

energy systems. She suggested that the bill be limited to solar, biomass, geothermal, and wind generation to reduce the fiscal impact.

George Ochenski, Montana-Wyoming Tribal Leaders Council, voiced support of the legislation.

Opponents' Testimony:

Bob Gilbert, Rosebud County, opposed the bill as written and noted that there is nothing wrong with looking at alternative energy sources, but the way one goes about it. Using tax incentives to generate electricity is a cost to the taxpayers in Rosebud County and there are no impacts that would be returned. He didn't see any jobs being created to offset those tax losses. Another concern was the doubling of the WET tax. If this proliferates, it could have an effect on the ability of certain generating facilities to market their product within the state, thereby perhaps reducing jobs and not allowing the entities there to have capital.

Informational Testimony:

Deb Martin Young, Montana Power Company, declared that the bill fit well with the Universal Systems Benefits Charge (USBC) programs and things that were discussed by the Transition Advisory Council (TAC) in creating some partnering opportunities to stretch USBC dollars further to increase renewable resources and energy conservation. Currently, the net metering law is at 50 kilowatts and that is an appropriate level, rather than the proposed increase to 500 kilowatts. Additionally, if there was too large of a volume of net metered systems, it could have an impact on the transmission and distribution rates of the remainder of customers. Depending on the volume, it could impact the scheduling of loads coming onto the system.

Questions from Committee Members and Responses: None

Closing by Sponsor:

Todd Everts closed for the sponsor.

ADJOURNMENT

Adjournment: 5:15 P.M.

SEN. MACK COLE, Chairman

MISTI PILSTER, Secretary

MC/MP

EXHIBIT (ens65aad)